

# EXHIBIT A

**In The Matter Of:**  
*UNITED STATES OF AMERICA, V*  
*DAVID BLASZCZAK,*

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*April 19, 2018*

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*Southern District Court Reporters*

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UNITED STATES OF AMERICA, V  
DAVID BLASZCZAK,

April 19, 2018

<p>I4JKBLA2      Flynn - Direct      Page 3017</p> <p>1 Mr. Blaszczak's contract with Deerfield at some point in 2013.</p> <p>2 Does looking at this refresh your recollection about</p> <p>3 approximately when that occurred?</p> <p>4 A. Yes.</p> <p>5 Q. And what else, if anything, do you recall about the --</p> <p>6 well, what do you recall about the explanation you received, if</p> <p>7 any, for that decision?</p> <p>8 A. I generally remember that people felt that he had limited</p> <p>9 value, and that there was no purpose to continue receiving his</p> <p>10 research, given that we had to pay a meaningful amount for it.</p> <p>11 Q. Was that a unanimous view at Deerfield?</p> <p>12 A. I believe so. I don't have a direct recollection.</p> <p>13 Q. And directing you to the top email on the screen from</p> <p>14 Mr. Fogel, and his comment, "I know we've had a spotty record,</p> <p>15 but DB hit us with three accurate and differentiated calls year</p> <p>16 to date," do you recall, sir, inputs from Mr. Blaszczak in 2013</p> <p>17 up till October?</p> <p>18 A. I don't.</p> <p>19 MR. ESSEKS: We can take that down.</p> <p>20 Q. Do you recall, sir, whether after that cancellation that we</p> <p>21 just referred to in 2013, whether an arrangement with</p> <p>22 Mr. Blaszczak was reinstated to have him continue to be an</p> <p>23 information provider?</p> <p>24 A. I believe so.</p> <p>25 Q. And what do you know about how that came to be?</p>	<p>I4JKBLA2      Flynn - Direct      Page 3019</p> <p>1 A. Specifically in 2014?</p> <p>2 Q. Or after the cancellation of Mr. Blaszczak's contract in</p> <p>3 2013.</p> <p>4 A. I'm struggling with the chronology, so I don't -- I have to</p> <p>5 say I don't remember.</p> <p>6 Q. Fine. Do you remember any -- leaving aside timing, do you</p> <p>7 remember being briefed by your compliance staff regarding</p> <p>8 review of Mr. Blaszczak at any point?</p> <p>9 A. Yes.</p> <p>10 MR. ESSEKS: Your Honor, I'd like to inquire</p> <p>11 regarding -- on the basis of state of mind.</p> <p>12 THE COURT: Whose state of mind?</p> <p>13 MR. ESSEKS: The witness.</p> <p>14 THE COURT: Sustained.</p> <p>15 MR. ESSEKS: May I be heard on that, your Honor?</p> <p>16 THE COURT: Pardon me?</p> <p>17 MR. ESSEKS: May I be heard on that?</p> <p>18 THE COURT: All right.</p> <p>19 (Continued on next page)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>I4JKBLA2      Flynn - Direct      Page 3018</p> <p>1 A. I don't recall.</p> <p>2 Q. Do you recall whether any review was done by your</p> <p>3 compliance staff prior to any reinstatement of Mr. Blaszczak as</p> <p>4 a contractor?</p> <p>5 A. I know that Marian had called --</p> <p>6 MS. CUCINELLA: Objection.</p> <p>7 THE COURT: Sustained. Stricken.</p> <p>8 MR. ESSEKS: Your Honor, is that foundation or another</p> <p>9 reason?</p> <p>10 THE COURT: Well, he was beginning to start retailing</p> <p>11 hearsay.</p> <p>12 MR. ESSEKS: Your Honor --</p> <p>13 THE COURT: And it was unresponsive. "Were you</p> <p>14 involved in those discussions?</p> <p>15 "I don't recall.</p> <p>16 "Any of them?</p> <p>17 "I don't recall being involved in any of those</p> <p>18 discussions. I was notified..."</p> <p>19 MR. ESSEKS: Fair enough, Judge.</p> <p>20 BY MR. ESSEKS:</p> <p>21 Q. Mr. Flynn, were you informed by your compliance staff</p> <p>22 regarding any -- I'm not asking you what was done, I'm asking</p> <p>23 you, were you informed of any -- by your compliance staff</p> <p>24 whether any work was done with respect to Mr. Blaszczak in</p> <p>25 2014? Yes or no, if you recall.</p>	<p>I4JKBLA2      Flynn - Direct      Page 3020</p> <p>1 (At the sidebar)</p> <p>2 THE COURT: Okay, Mr. Esseks.</p> <p>3 MR. ESSEKS: So, Judge, the government has designated</p> <p>4 Mr. Flynn a coconspirator. They did so in the indictment, they</p> <p>5 did so in their opening. Their principal witness said that</p> <p>6 Mr. Flynn is a coconspirator in this conspiracy. Therefore,</p> <p>7 his state of mind is at issue on the question -- questions,</p> <p>8 among others, whether there was a conspiracy at all, what was</p> <p>9 its nature, who was involved in it, and the compliance work</p> <p>10 that was done that was reported to him, and that wouldn't have</p> <p>11 happened without his blessing is relevant to his state of mind,</p> <p>12 among other things.</p> <p>13 THE COURT: What other things?</p> <p>14 MR. ESSEKS: Well, it's at least relevant to his state</p> <p>15 of mind, Judge.</p> <p>16 MS. CUCINELLA: He's not on trial here; the defendants</p> <p>17 are. And the fact that he was designated as a coconspirator,</p> <p>18 the fact that he was briefed on compliance facts doesn't go to</p> <p>19 actions he took during the course of the conspiracy. The</p> <p>20 briefing happened much later, at the end of the conspiracy, in</p> <p>21 2014. There's no dispute that they then canceled him. It's</p> <p>22 irrelevant, and, if anything, it's confusing and prejudicial.</p> <p>23 MR. ESSEKS: Your Honor, we can bring out time frame,</p> <p>24 but our basic starting point, Judge, is his mental state is in</p> <p>25 issue. It is the contention of the government that he's a</p>

UNITED STATES OF AMERICA, V  
DAVID BLASZCZAK,

April 19, 2018

I4JKBLA2 Flynn - Direct Page 3021	I4JKBLA2 Flynn - Direct Page 3023
<p>1 coconspirator, and so his --</p> <p>2 THE COURT: So he's not named in the indictment,</p> <p>3 correct?</p> <p>4 MR. ESSEKS: He is designated as CC1, without being --</p> <p>5 THE COURT: Is he named in the indictment?</p> <p>6 MR. ESSEKS: He is not named in the indictment. He is</p> <p>7 identified in the indictment, alleged as a coconspirator as the</p> <p>8 portfolio manager for Deerfield.</p> <p>9 MR. BERKE: I can offer one other if we engage in a</p> <p>10 debate of esoteric rules of evidence: Rule 806 --</p> <p>11 MR. ESSEKS: Indeed.</p> <p>12 MR. BERKE: -- which you know well, that we are</p> <p>13 allowed to impeach coconspirator statements as if the</p> <p>14 coconspirator was present. And if the coconspirator is</p> <p>15 present --</p> <p>16 THE COURT: How is his state of mind relevant to</p> <p>17 impeaching somebody else?</p> <p>18 MR. BERKE: No, no. Under 806, if the government has</p> <p>19 introduced statements, as coconspirator statements, like</p> <p>20 Mr. Flynn's statements, some of which have been introduced, we</p> <p>21 get to introduce the --</p> <p>22 THE COURT: What Flynn statements have been introduced</p> <p>23 as coconspirator statements?</p> <p>24 MR. ESSEKS: Your Honor, I'm showing you Government</p> <p>25 Exhibit 821 in evidence. It is an email chain from June of</p>	<p>1 most underutilized rules because I think the law does allow you</p> <p>2 to bring into evidence as if a hearsay declarant was on a stand</p> <p>3 expressing whatever statements the government's seeking to</p> <p>4 introduce in support of a conspiracy.</p> <p>5 And I would submit, your Honor, that whether Mr. Flynn</p> <p>6 was here or not, if we had evidence Mr. Flynn was aware</p> <p>7 Mr. Blaszcak was vetted by Deerfield compliance, that would be</p> <p>8 a separate basis, separate and apart from Mr. Flynn's state of</p> <p>9 mind. That's all I'm offering, Judge. I didn't mean to</p> <p>10 confuse the issue.</p> <p>11 MS. CUCINELLA: Hold on. And with respect to 806,</p> <p>12 first of all, Mr. Flynn is on the stand, and you are welcome to</p> <p>13 ask him about his -- the fact that he was briefed. You have</p> <p>14 done that. He has said that he was.</p> <p>15 With respect to the specifics of it, and particularly</p> <p>16 with respect to that statement, it happened a year later. The</p> <p>17 two things are unrelated. So, if you want to get into hearsay</p> <p>18 of what he was briefed on and what he was told, you have to</p> <p>19 come up with a reason why it's relevant to his state of mind at</p> <p>20 that point.</p> <p>21 MR. ESSEKS: And, your Honor, what we're -- we</p> <p>22 digressed into 806 by way of explanation, but I think</p> <p>23 considering 806 demonstrates the relevance of the state of mind</p> <p>24 of a noncharged coconspirator. But that's simply a way to</p> <p>25 illustrate the relevance of the point, which is the state of</p>
I4JKBLA2 Flynn - Direct Page 3022	I4JKBLA2 Flynn - Direct Page 3024
<p>1 2012 regarding radonc shorts. There is a proposal from</p> <p>2 Mr. Fogel to the devices group to increase the exposure of</p> <p>3 upcoming proposed cuts to radonc. The response from Mr. Flynn,</p> <p>4 "FWM is fine with me."</p> <p>5 THE COURT: That was offered and received as a</p> <p>6 coconspirator statement?</p> <p>7 MR. ESSEKS: It is offered -- that statement cannot</p> <p>8 come in without --</p> <p>9 THE COURT: Question number one: Did anybody object</p> <p>10 to it?</p> <p>11 MS. CUCINELLA: No.</p> <p>12 MR. ESSEKS: No, Judge, but objecting to its admission</p> <p>13 is not a prerequisite under 806 to challenging the out-of-court</p> <p>14 declaration.</p> <p>15 MS. CUCINELLA: I think we can even side-circuit this.</p> <p>16 THE COURT: Excuse me.</p> <p>17 You're saying this state-of-mind evidence impeaches</p> <p>18 the veracity of the declaration "Fine with me"?</p> <p>19 MS. CUCINELLA: Again, hold on for one minute, because</p> <p>20 what you're trying to impeach him with happened a year to two</p> <p>21 years after that statement was made. So if you're trying to</p> <p>22 use it to impeach state of mind, it's totally off base.</p> <p>23 MR. BERKE: Well, Judge, there are two separate</p> <p>24 arguments. State of mind is one basis. So I think they're</p> <p>25 entirely separate. 806 -- and again, I think 806 is one of the</p>	<p>1 mind of an uncharged coconspirator is relevant to whether he</p> <p>2 was in or out, whether there was a conspiracy, all of which is</p> <p>3 at the heart of --</p> <p>4 MS. CUCINELLA: 806 goes into impeaching a declarant.</p> <p>5 THE COURT: No, look, stop this free-for-all.</p> <p>6 MS. CUCINELLA: Sorry. I have to get a word in every</p> <p>7 once in a while.</p> <p>8 THE COURT: I'm going to send the jury out for a</p> <p>9 minute.</p> <p>10 (Continued on next page)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

UNITED STATES OF AMERICA, V  
DAVID BLASZCZAK,

April 19, 2018

I4JPBLA3	Flynn - Direct	Page 3025	I4JPBLA3	Flynn - Direct	Page 3027
1	(In open court)		1	THE COURT: Okay.	
2	THE COURT: Ladies and gentlemen, we need a few		2	MR. ESSEKS: And making allegations --	
3	minutes. Jury room, please.		3	THE COURT: So that's good enough. That's good	
4	Mr. Flynn, please step out of the room after the jury		4	enough. He's effectively named in the indictment.	
5	leaves.		5	MR. ESSEKS: Yes. And just, for completeness of the	
6	(Jury and witness not present)		6	record, as you know, Judge, Mr. Fogel testified that Mr. Flynn	
7	THE COURT: Be seated, folks. Okay. What is the		7	was in on it, and in a January 22nd letter from the government,	
8	proposed testimony, Mr. Esseks?		8	Mr. Flynn was identified as a co-conspirator.	
9	MR. ESSEKS: Your Honor, if you'll forgive me, I'm		9	THE COURT: Okay. All right.	
10	slightly at a loss. I think --		10	MS. CUCINELLA: I think to the extent that they're	
11	THE COURT: Well, we got here because the witness		11	trying to offer it for state of mind, all the trading that is	
12	answered a question.		12	charged in this case, including the statements that they	
13	MR. ESSEKS: Yes.		13	brought up at sidebar, the "fine with me" e-mail is from 2012.	
14	THE COURT: No question was pending, and then you said		14	All of the trading is over before this briefing happened.	
15	I'd like to inquire on the basis of state of mind, and then we		15	So to the extent that they want to get the content of	
16	had a sidebar.		16	the hearsay statement in, it just serves to confuse the issue.	
17	MR. ESSEKS: Yes. Yes, Judge.		17	They've gotten in the fact that he was briefed on it, that the	
18	THE COURT: So what is it you propose to adduce		18	review happened, and that he knew about it. I actually think	
19	through the witness?		19	he said earlier he doesn't remember the specifics of the	
20	MR. ESSEKS: That his compliance staff, led by		20	briefing.	
21	Ms. Brancaccio, did a compliance review regarding Mr. Blaszczak		21	But the timing of this makes the relevance of it so	
22	and his company that, at some point, included Ms. Brancaccio		22	low, and with respect to state of mind, it's arguably	
23	interviewing Mr. Blaszczak directly before Deerfield was		23	irrelevant given the timing of the briefing. Given that, and	
24	willing to continue with him as a consultant.		24	the fact that Ms. Brancaccio is going to be testifying, the	
25	THE COURT: You're going to call Ms. Brancaccio?		25	government doesn't think this should be permitted.	
I4JPBLA3	Flynn - Direct	Page 3026	I4JPBLA3	Flynn - Direct	Page 3028
1	MR. ESSEKS: We are.		1	THE COURT: Well, I'm going to permit it on state of	
2	THE COURT: And I should take this hearsay from this		2	mind, if the defense wants to pursue it. Who knows,	
3	gentleman why?		3	Ms. Brancaccio may say something else, unlikely as that seems	
4	MR. ESSEKS: For his state of mind. He's alleged to		4	to be. All right. Get the jury back.	
5	be a co-conspirator. His state of mind is directly relevant to		5	(Pause)	
6	the central issues in the case.		6	Has the problem with the subpoena been worked out with	
7	THE COURT: Look, it's at best a tenuous connection.		7	the brokerage and the tax returns?	
8	The indictment doesn't identify him as a co-conspirator. He is		8	MR. NAFTALIS: No, I have not had a chance to speak	
9	not on trial. You have a person with firsthand knowledge of		9	with Mr. Schachter, but I imagine that, based on what your	
10	what was done. You have a person, Ms. Brancaccio, perfectly		10	Honor has said, it's acceptable to the government if it will be	
11	capable, if it's admissible and perhaps it is but I don't rule		11	acceptable to them.	
12	on that, of saying she reported all of that to this witness.		12	(Witness and jury present)	
13	I don't know what the government's view on that is.		13	THE COURT: The defendants and the jury all are.	
14	So I'm very skeptical of your point of view, but it's		14	Mr. Esseks, please proceed.	
15	significant enough to me that I want to understand it as well		15	BY MR. ESSEKS:	
16	as I can before I decide.		16	Q. Mr. Flynn, do you recall being briefed by your compliance	
17	MR. ESSEKS: Thank you, Judge. I stepped away from		17	staff, including Ms. Brancaccio, at any point in 2014 or before	
18	the podium just to retrieve the indictment, and I'm looking at		18	regarding any reviews conducted regarding Mr. Blaszczak?	
19	paragraph 8 of the superseding indictment.		19	A. I do.	
20	THE COURT: Yes.		20	Q. What do you recall?	
21	MR. ESSEKS: Which identifies a co-conspirator, not		21	MS. CUCINELLA: Objection, vague. If we could have a	
22	named as a defendant herein, who served as investment advisor		22	time period.	
23	A's managing partner, and it describes him as having primary		23	THE COURT: You can cross on it.	
24	responsibility for approving all investment decisions and		24	What do you recall having been told?	
25	supervising all analysts.		25	And members of the jury, the answer is received only	